

Village of Volente

Health and Sanitation Ordinance

ORDINANCE NO.

**AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS
RESTRICTING TRASH, GARBAGE, AND UNSANITARY
CONDITIONS WITHIN THE INCORPORATED CITY LIMITS OF
THE VILLAGE OF VOLENTE.**

WHEREAS, The City Council of the Village of Volente ("City Council") seeks to promote the health, safety and general welfare to the community by preventing death, injury, property damage and urban blight within the City Limits; and

WHEREAS, The City Council finds that the existence of stagnant water and other unsanitary conditions will harbor and attract rodents and insects , will result in the production of disease to the City; and

WHEREAS, The City Council finds that the inadequate construction and maintenance of private sewage treatment facilities (septic systems) will result in increased sanitation problems, will increase disease, and will increase improper treatment and disposal of sewage and waste matter; and

WHEREAS, The City Council finds that the existence of rubbish, filth, carrion, and other unsanitary, and unwholesome matter will lower the quality of life for citizens of the City, will harbor, rodents, will increase illegal dumping and littering, will increase fire hazards, and will increase crime by decreasing visibility and access; and

WHEREAS, Pursuant to Texas Local Government Code section 51.001 the City Council is authorized by law to adopt an ordinance that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, Pursuant to Texas Local Government Code section 51.032 the City Council is authorized by state law to adopt an ordinance , not inconsistent with the state law , that the City Council considers proper for the government of the City; and

WHEREAS, Pursuant to Texas Local Government Code Chapter 217 the City has the statutory authority to define and abate nuisances and impose fines; and

WHEREAS, Pursuant to the Texas Health and Safety Code, including but not limited to Chapter 342, the City Council is authorized by law to regulate public health and

sanitation within the City in the areas of stagnant water, filth, carrion, dangerous weeds, and other unhealthy , unsanitary , and unwholesome conditions; and

WHEREAS, The City Council finds that it is necessary and proper for the good government, peace, and order of the City and for proper public health and sanitation to in the City to adopt an ordinance on public health and sanitation that regulates stagnant water, filth, carrion, dangerous weeds, and other unhealthy, unsanitary, and unwholesome conditions in the City;

NOW, THEREFORE, be it ordained by the City Council of the Village of Volente, County of Travis , State of Texas, that;

1. ENACTMENT CLAUSES

Popular Name

This Ordinance may be referred to as the Village of Volente’s “Health and Sanitation Ordinance”

Findings of Fact

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council of the Village of Volente, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

Purpose

This Ordinance is adopted to promote the public health, safety, morals and general welfare within the City through reasonable regulation of nuisances. The purpose of this Ordinance is to protect the citizenry, prevent pest and vermin, protect air quality and preserve the water resources of the City.

Compliance Required

It shall be unlawful for any person to violate any provisions of this Ordinance.

Scope of Jurisdiction

The provisions of this Ordinance shall apply within the incorporated municipal boundary of the City.

Effective Date

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

2. DEFINITIONS

(A) General

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases that are not defined in this Ordinance but are defined in other Ordinances of the City shall be given the meanings set forth in those Ordinances. Other words and phrases shall be given their common, ordinary meanings unless the context clearly states otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Ordinance.

(B) Specific

- (1) Animal Carcass: The carcass of an animal exposed so that noxious or disagreeable odors may escape there from and contaminate the air.
- (2) Brush Trimmings: Tree and shrub trimmings, which are not susceptible to placement in regulation containers.
- (3) City: The Village of Volente, an incorporated municipality located in Travis County, Texas
- (4) City Limits: The incorporated municipal boundary of the Village of Volente
- (5) Code Enforcement Officer: The Code enforcement officer of the Village of Volente or Officers designee. The term may also include a licensed peace officer employed by the City.
- (6) Debris: Dirt, concrete, rocks, bricks, scrap wood, other waste or building materials.
- (7) Garbage: Waste capable of decay from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.
- (8) Junk: Worn out, worthless, discarded material, including odds and ends, old iron or other metal, glass, and paper
- (9) Lot: A lot as defined in the zoning regulations plus any additional real property located between the property line and curb or the property line and one half the width of the alley
- (10) Offal: Waste meat products or parts of a butchered animal rejected as unfit for use.

- (11) Person: any human individual, association, corporation, institution, or responsible governmental entity occupying, owning, leasing, renting, or residing upon a lot that is subject to this Ordinance. The fact that a person is a present occupant of the premises shall be *prima facie* evidence that the person has supervision and control of said property. If the premises are unoccupied, the fact that the current person is listed by the current tax roll as the owner shall be *prima facie* evidence that the person is the owner and has supervision and control of said lot.
- (12) Refuse: means garbage, rubbish, junk, paper, and other waste both capable and not capable of decay, including vegetable matter and fish and animal carcasses.
- (13) Rubbish: waste not capable of decay from a public or private establishment.
- (14) Sanitary: A condition of good order and cleanliness that precludes the probability of disease transmission.
- (15) Trash: Animal carcasses, garbage, debris, junk, offal, refuse, rubbish, and , as herein defined, including construction trash.
- (16) Undeveloped lot, tract, or parcel of land: Land that has not been cleared either fully or partially, and is in an undisturbed, natural condition for the Village of Volente area of the State of Texas.
- (17) Weeds: all rank and uncultivated vegetable growth or matter that may create an unsanitary condition or become a harborage for rodents, vermin, or other disease carrying pests, regardless of the heights of the weeds.

Burning

It shall be unlawful for any person to burn any non vegetative matter at any time within the incorporated city limits of the Village of Volente. The burning of brush, leaves, and yard trimmings is permitted provided said burning does not cause a health and safety hazard or nuisance to surrounding property owners and or tenants.

Depositing, Dumping

It shall be unlawful for any person to dump, place, deposit, or throw, or otherwise dispose of any trash of any kind on public or private property. A violation of this section shall constitute a trespass on said property when committed against or upon any public property or property owned or occupied by another person. Violations of this section shall include but are not limited to the following:

- (1) Vegetation and Trimmings: The throwing , placing, dumping, or depositing of any lawn trimmings, hedge trimmings, or other cuttings or trimmings of weeds, flowers, or other vegetation on or in any gutter, street, sidewalk, parkway, driveway, curb, alley, or any other public property of the City, or in or on any lot, vacant or occupied, driveway or other private property.
- (2) Trash: The throwing, placing, dumping or depositing of any garbage or refuse of any kind on or in any gutter, street, sidewalk, parkway, driveway, curb, alley, or any other public property of the City, or on any private lot, vacant or occupied, other private property.
- (3) Unsanitary Matter: the throwing, placing, dumping, or depositing of any animal, vegetable or mineral matter or any composition or residue thereof, which is in an unsanitary condition or injurious to public health on or in any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the City, or on or in any lot vacant or occupied, driveway or other private property.

Trash that has been properly disposed of in accordance with the garbage collection provisions of this code shall be exempt from this section

Unsanitary Conditions on Property

It shall be unlawful for any person to permit any of the following unsanitary conditions to exist on, or emanate from, any such lot, tract, or parcel of land:

- (1) stagnant water or any collection of water that may allow the breeding of insects, exposed animal carcasses, or any other open drain, sewer, or cesspool;
- (2) any waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, sewage, used tires or other waste of any kind that is stored, deposited or disposed in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water or the breeding of insects or rodents; or
- (3) any waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, sewage, used tires or other waste of any kind that is accumulating in, being discharged into or flowing into or onto any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the City, or in or on any lot, vacant or occupied, driveway or other private property.
- (4) Any garbage or waste receptacle or container that is in an unsanitary condition.

Inspection of Premises

The Code Enforcement Officer may inspect or cause to be inspected any property that is, or for which the Officer has probable cause to believe is in an unsanitary condition or otherwise offensive in violation of this Ordinance. In order to perform inspections of private properties reasonably suspected of being in violation of this Ordinance but which is not in plain view, the Officer is authorized to seek a search warrant from any judge of competent jurisdiction.

Remediation Required

It shall be the duty of any person to: (I) remove all vegetation, trimmings, garbage and refuse; (II) remove or cause to be removed any and all unsafe or unsanitary junk; (III) fill, drain, repair, remove or clean any condition on such lot, tract, parcel of land or portion thereof that is in violation of this Ordinance, or take any and all other corrective or remediation action necessary to comply with this Ordinance, as often as may be necessary.

Animal Carcasses- Nuisance

- (a) No person shall place or deposit the exposed carcass of any animal on any street, alley, highway or public place or on private property.
- (b) No person shall allow or permit any animal that has died, at which at the time of death was owned or controlled or kept by such person, to be in or upon any street, alley, lot or other place in the City, such person shall cause the carcass to be disposed of in a sanitary manner.
- (c) An exposed animal carcass is deemed to be a nuisance and a danger to the public health, safety and welfare. Notwithstanding any other remedy or remedies available to the City under this section or any other ordinance or statute, the Code Enforcement Officer, or any other City employee or their designee may enter upon any premises, whether public or private, where an animal carcass is located to retrieve it and dispose of it in compliance with this section if;
 - (1) the carcass has reached a stage of decomposition or the environmental conditions are such noxious odors are emanating from the carcass, or insects, vermin or any other animals have been drawn to the site; or
 - (2) The exposed animal carcass is not disposed of in compliance with subsection hereof within 24 hours of the animal's death.

Any expenses incurred by the City for such removal shall be deducted from the commercial value derived from the carcass, if any, or assessed against the owner of the animal along with any penalty or penalties for violation of this section.

Notice

(a) In the event that the person shall fail to comply with the requirements of remediation of this Ordinance, notice of such violation shall be given prior to exercising the authority granted in this Ordinance.

(b) Such notice shall be given:

(1) Personally to the owner in writing;

(2) By letter addressed to the owner at the owner's address as recorded in the appraisal district's records; or

(3) If personal service cannot be obtained, notice may be given by:

(A) By publication at least once;

(B) Posting the notice on or near the front door of each building on the property to which the violation relates; or

(C) Posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

(4) if a municipality mails a notice to a property owner in accordance with subsection (b) and the United States Postal Service returns the notice as "refused" or "unclaimed", the validity of the notice is not affected, and the notice is considered as delivered.

(c) Annual Notice: After a property owner has been given one (1) notice of violation on a lot, tract, or parcel of land, annual notice may be given to the property owner. If the City opts to provide Annual Notice, such notice shall be mailed to the owner at the address recorded with the appraisal district and posted on the property. Once the City has given such annual notice, no further notice shall be required prior to abatement for that lot, tract, or parcel of land for a one (1) year period. If the City does not receive notice in a change of ownership, the City may abate any nuisance contained on the property covered by this Ordinance without further notice and assess expenses to the owner.

(d) Contents of Notice: The notice of violation shall at a minimum contain the following:

(1) The name of the owner, if known, of the premises proposed to be entered upon by the City;

- (2) The address or legal description of the premises proposed to be entered upon by the City;
- (3) The offending conditions existing on the lot, tract or parcel of land;
- (4) A statement that the recipient has Thirty (30) days for junk and high weeds and seven (7) days for unsanitary conditions or immediate threats to the health, safety, and welfare from the date of notice to correct the violation, that if he/she fails to do so, the City will enter the premises and remedy the same, and that the City is entitled to attach a lien to the property to secure payment for services rendered; and
- (5) A statement that the recipient is entitled to a hearing.

(e) If annual notice is given, it shall state, in addition to the foregoing, that the City may enter upon the premises to remedy any violation at thirty (30) day intervals during the year.

(f) Owner Requested Work: In the event the owner of any such property requests that the City do such work as is necessary in order to abate or prevent a violation of this chapter, then such request will negate the requirement for notification of violation by the City, and the City will have the same remedies as hereinafter set forth.

(g) Exception: Notwithstanding the foregoing provisions, the City may abate, without prior notice, any unsanitary conditions, animal carcasses and dangerous weeds that have grown to a height of forty-eight (48) inches and are an immediate danger to health, life, or safety of any person. In the even that the City abates weeds pursuant to this subsection, the requirements set forth in the Texas Health and Safety Code for such abatement shall govern.

Abatement, Expenses, and Lien

- (a) Abatement: If the owner of any lot, tract, parcel of land or portion thereof does not comply with the provisions of this Ordinance within seven (7) days of receipt of Notice of Violation, the City or its Agents may:
 - (1) Enter upon such premises and do such work as necessary , or cause the same to be done, in order that the premises may comply with the requirements set forth in this Ordinance; and
 - (2) Pay for the work or improvements made and the charge the expenses to the owner of the property.
- (b) Assessment of Expenses and Lien

- (1) The City designee may assess expenses incurred by the City in exercising the Authority granted in this section. The City attorney, or an assigned representative, may file a lien statement with the county clerk of Travis County of such expenses including administrative, filing and publication costs incurred in abating the unsanitary condition on said premises. The lien statement must state the name of the owner, if known, and a legal description of the property. The City shall have a privileged lien on such lot, tract, or parcel of land, second only to tax liens and liens for street improvements, for the expenses incurred, together with interest at the rate of TEN Percent (10%) per year on the amount due from the date the City paid or incurred such expenses. For any such expenditures and interests, suit may be instituted and recovery and foreclosure had in the name of the City, and the statement of expenses or a certified copy thereof shall be *prima facie* proof of the amount expended in any such work performed by the City.
 - (2) The Code Enforcement Officer shall execute and file a release of lien for the subject property with the County Clerk of Travis County within a reasonable time after payment of the amount due on the property including interest through the date of payment
- (c) Hearing: Any person or entity receiving an abatement notice under this Ordinance (with the exception of section (g) under the heading Notice in this Ordinance) shall have a right to meet with the code enforcement officer or his designee within ten (10) days of receipt of such notice to assert any legal defense as to why the City should not proceed with the abatement and attachment of a lien as provided in this Ordinance.

7. ENFORCEMENT

- (a) Civil and Criminal Penalties: The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provisions of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.
- (b) Criminal Prosecution: Any person violating any provisions of this Ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00) per occurrence. Each day that a provision of this Ordinance is violated shall constitute a distinct and separate offense. An offense under this Ordinance is a misdemeanor.
- (c) Civil Remedies: Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including but not limited to the following:

- (1) Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- (2) a civil penalty up to one thousand dollars (\$1,000.00) a day when it is shown that the defendant was actually notified of the provisions of this Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with this Ordinance;
- (3) Other available relief.

8. REPEALER

All ordinances or parts of Ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

9. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

10. PROPER NOTICE AND MEETING

It is hereby official found determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Local Government Code.

11. PUBLICATION

The City Council hereby directs the City Secretary to publish the caption of this Ordinance in compliance with the requirements of the Texas Local Government Code

12. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its adoption and it is accordingly so ordained.

Approved this the day of 2013.

Justine Blackmore Hallista, Mayor

Attest: _____
Joan Jackson, City Secretary